

# Corruption in Procurement

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# Topics

- Introduction
  - Christopher Yukins/GWU Law School
- Anti-Corruption in Public Procurement in the United States
- New Approaches to Fighting Corruption



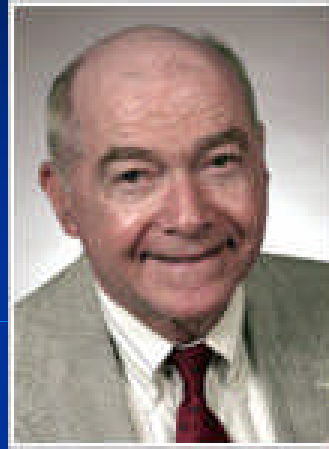
# Other Professors in Program

3



Ralph Nash

John Cibinic (d. 2005)



Fred Lees



Joshua Schwartz



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# Special thanks to Professor Steven Schooner



# Reasons for Reform: *Desiderata, Goals, Constraints?*

5

- *Transparency*

- *Integrity*

- *Competition*

↑  
*Traditional?* ↑

- *Uniformity*

*Transitional?*

- *Risk Avoidance*

- *Wealth Distribution(\*)*

*Current?*

- *Best value*

- *Efficiency (administrative)*

- *Customer Satisfaction*



# U.S. Tools for Fighting Corruption



Suspension /  
Debarment



Corporate Compliance



Audits

Tender Boards



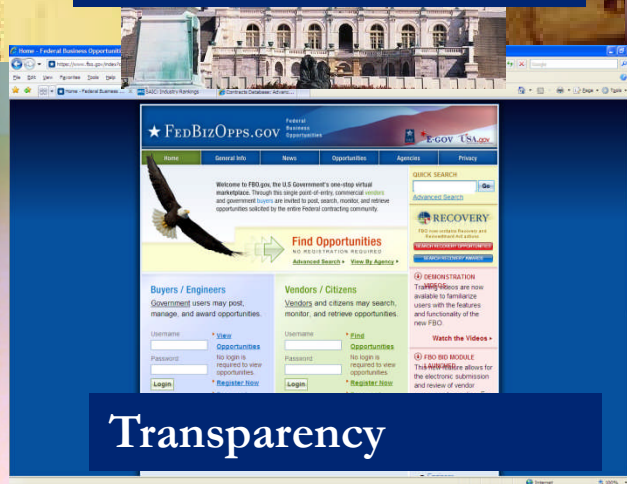
Ethics



Oversight



Bid Challenges



Transparency



Prosecu



# New Approaches to Fighting Corruption



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# What's Corruption?

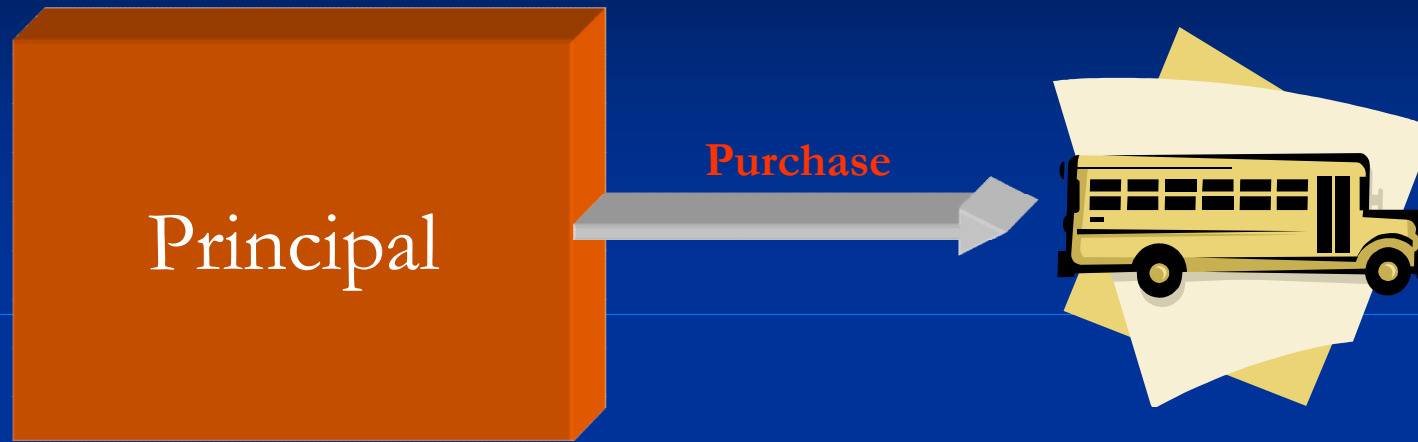


Is it a form of market  
barrier?

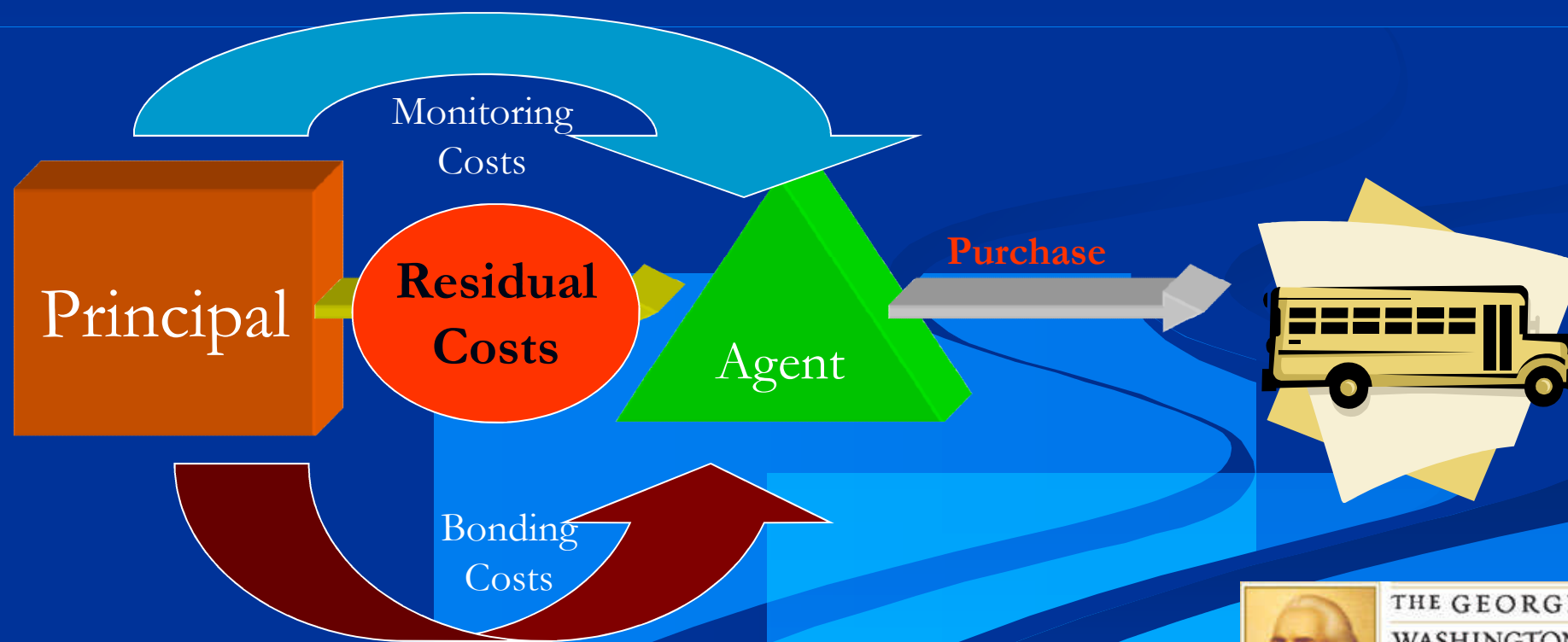




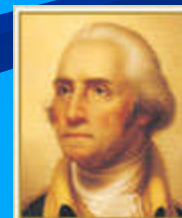
# Dissecting a Conflict of Interest



# Dissecting a Conflict of Interest – cont'd



# A Political History of the New U.S. Compliance Rules



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# Operation Ill Wind – 1980s



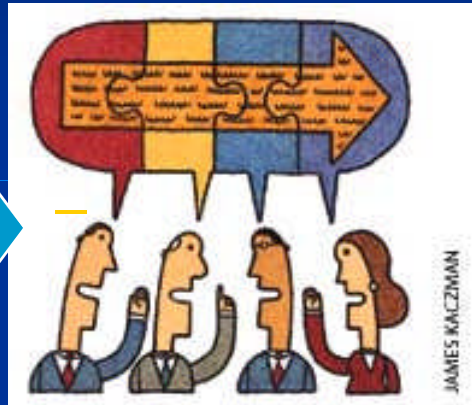
- 3-year investigation during Reagan administration
- Revealed cronyism and corruption in defense procurement
- Dozens of corporate and individual convictions, including an Assistant Secretary of the Navy
- Resulted in passage of Procurement Integrity Act, 41 USC 423
- Industry launched the Defense Industry Initiative ([www.dii.org](http://www.dii.org))



# Historical Progression



Sealed  
Bids



Negotiated  
Procurements

CONTRACT DATA REQUIREMENTS LIST

Contract No. \_\_\_\_\_ Date Revised \_\_\_\_\_

1. CONTRACT TYPE: \_\_\_\_\_

2. CONTRACT DESCRIPTION: \_\_\_\_\_

3. CONTRACT VALUE: \_\_\_\_\_

4. CONTRACT DATES: \_\_\_\_\_

5. CONTRACT TERMS: \_\_\_\_\_

6. CONTRACT CONDITIONS: \_\_\_\_\_

7. CONTRACT DOCUMENTS: \_\_\_\_\_

8. CONTRACT ADMINISTRATION: \_\_\_\_\_

9. CONTRACT PERFORMANCE: \_\_\_\_\_

10. CONTRACT CLOSURE: \_\_\_\_\_

“Frameworks”  
Contracting  
1990s



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# More Obvious Problems

Duke  
Cunningham →  
David Safavian

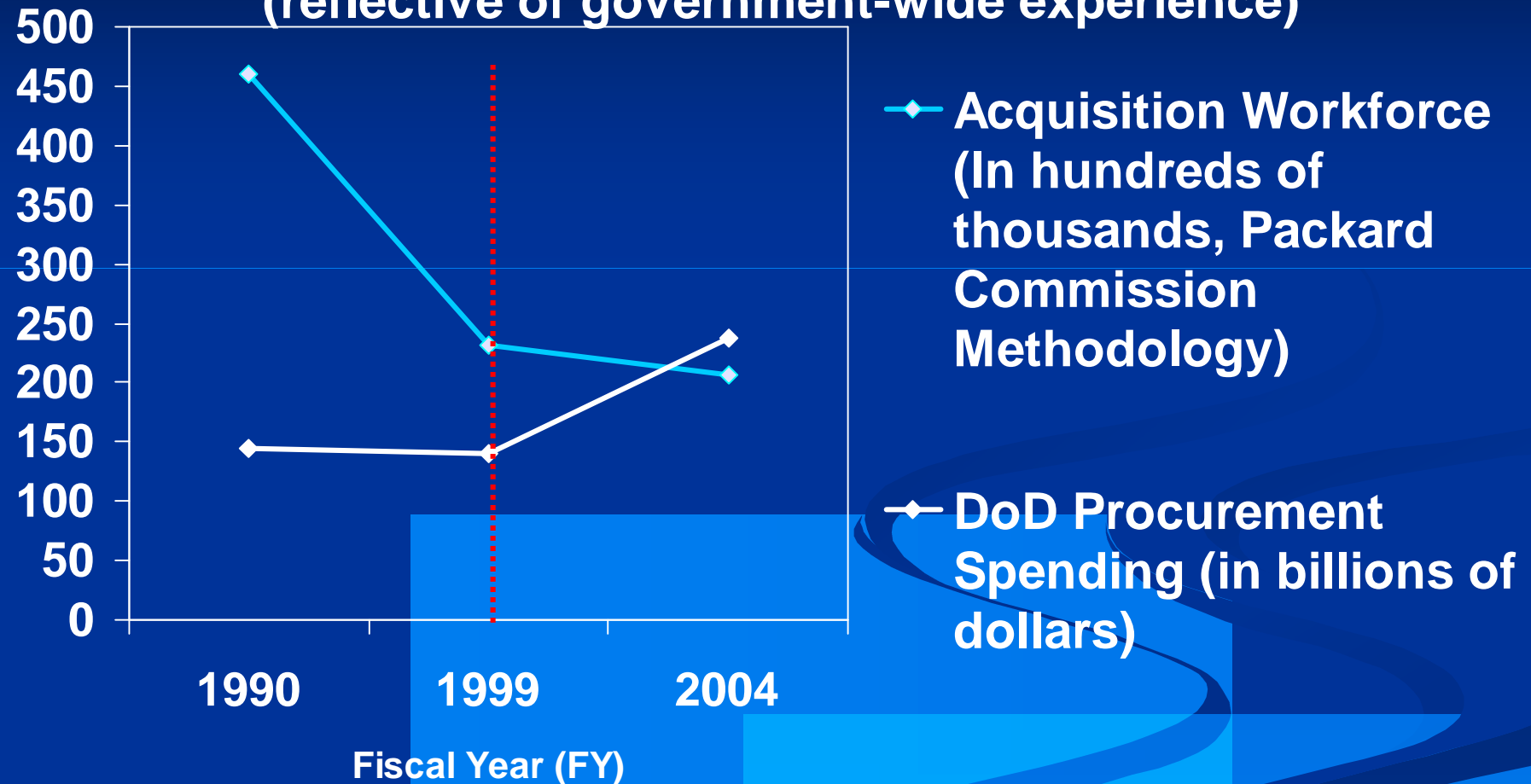


Ex-Aide To Bush Found Guilty  
Safavian Lied in Abramoff Scandal  
By [Jeffrey H. Birnbaum](#)  
Washington Post Staff Writer  
Wednesday, June 21, 2006; Page A01

Congressman resigns after  
bribery plea  
California Republican admits  
selling influence for \$2.4 million  
Monday, November 28, 2005  
(CNN) -- Rep. Randy "Duke"  
Cunningham

## Acquisition Workforce & Procurement Spending Defense

(reflective of government-wide experience)





# Other Causes for Concern: Outsourcing of Procurement Positions



Which code of ethics –  
government or contractor's?

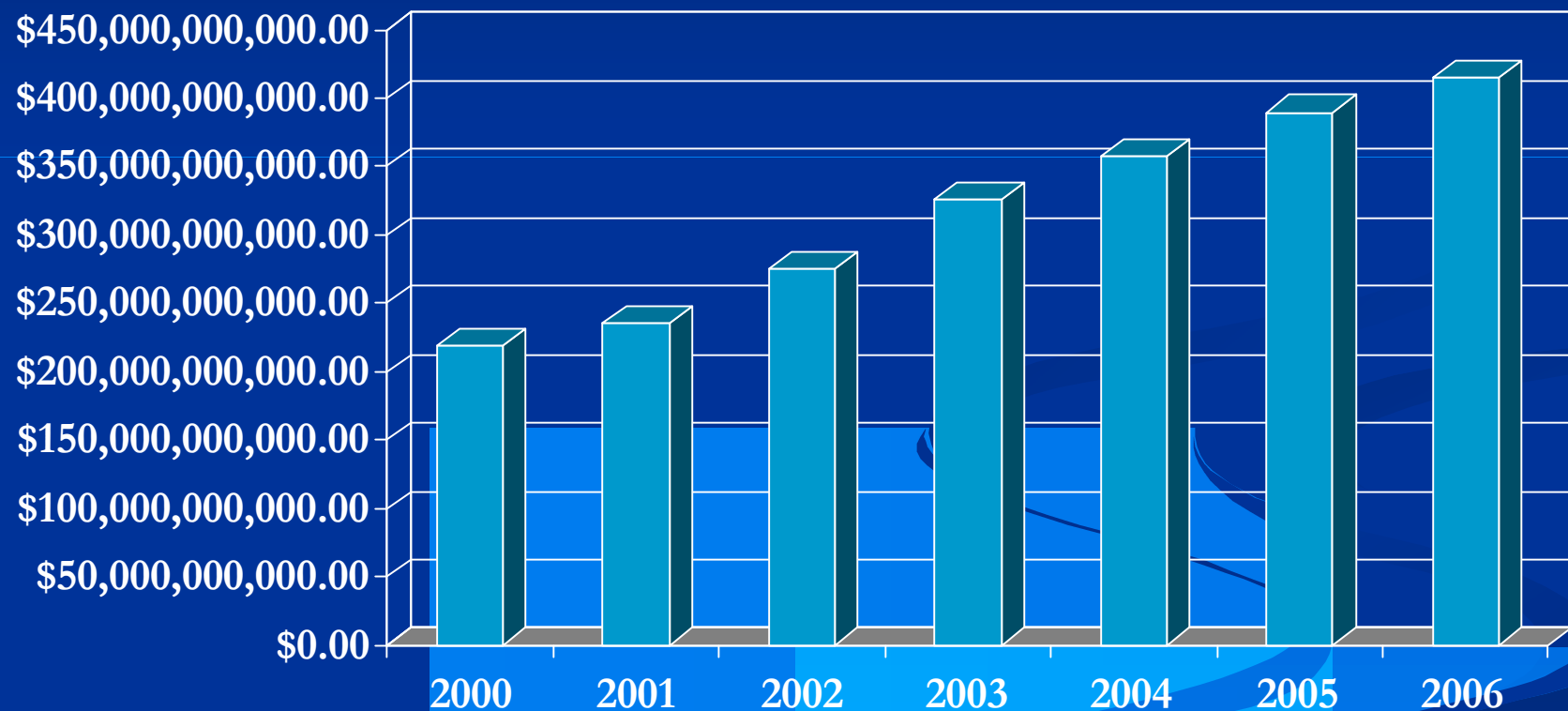


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September 11, 2001

# Total U.S. Federal Procurement (by fiscal year)

18



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## *UN Convention Against Corruption (Art. 9)*

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**Public Information**

**Advance award criteria and publication**

**Objective and predetermined criteria for award**

**Bid protest and appeal**

**Measures to control procurement personnel –  
e.g., rules and codes**

**Transparency, including in budgeting and  
accounting**



## U.S. Sentencing Commission: Organizational Sentencing Guidelines (revised 2004)


- Supreme Court has said that the sentencing guidelines are not binding on judges
- Reduced corporate sentences if compliance system in place



# An Initial Comparison of United States and United Kingdom Corporate Compliance Systems Standards



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U.S. Sentencing Commission Sentencing Guidelines - §8B2.1	U.S. Contractor Compliance System: Final Federal Acquisition Regulation Rule (73 Fed. Reg. 67064 (Nov. 12, 2008) (effective 12/12/08)	Preliminary UK Ministry of Justice & SFO Guidance for Corporate Compliance Systems, including <i>Consultation on Guidance</i> (closes Nov. 8, 2010)
1. Standards and procedures 	W/in 30 days: written code of business ethics and conduct	 <ul style="list-style-type: none"> <li>• “Clear, Practical and Accessible Policies and Procedures”</li> <li>• A Code of Ethics; principles applicable regardless of local laws or culture.</li> <li>• A policy concerning political contributions and lobbying activities.</li> <li>• A policy on gifts and hospitality and facilitation payments.</li> <li>• A commitment to making it explicit that the anti-bribery code applies to business partners</li> </ul>
2. Knowledge able leadership	 explicit reference.	<ul style="list-style-type: none"> <li>• “Top Level Commitment”</li> <li>• Board expected to take a strong anti-bribery stance; CEO should take leading role.</li> <li>• Senior officer should be in charge of compliance function.</li> <li>• Decisionmaking structured to address risk.</li> </ul>
3. Exclude risky personnel	W/in 90 days: “reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with Contractor’s code	<ul style="list-style-type: none"> <li>• Where appropriate, employees should be vetted.</li> <li>• A policy on outside advisers/third parties including vetting and due diligence and appropriate risk assessments.</li> </ul>
4. Training	W/in 90 days: business ethics awareness , compliance program	<ul style="list-style-type: none"> <li>• Training to ensure dissemination of the anti-corruption culture to all staff at all levels within the corporate.</li> </ul>
5. Monitor, evaluate, reporting hotline	W/in 90 days: internal control system to facilitate timely discovery	<ul style="list-style-type: none"> <li>• “Due diligence” and “Monitoring and Review”</li> <li>• Regular checks and auditing in a proportionate manner.</li> <li>• A helpline which enables employees to report concerns; safeguards for whistleblowers</li> <li>• Financial controls</li> <li>• Supply chain partners to have codes of conduct</li> </ul>
6. Incentives and discipline	W/in 90 days: internal control system to ensure corrective measures	<ul style="list-style-type: none"> <li>• “Effective Implementation”</li> <li>• Individual accountability</li> <li>• Appropriate and consistent disciplinary processes.</li> </ul>
7. Adjust program to risk	W/in 90 days: review and adjust	<ul style="list-style-type: none"> <li>• “Risk Assessment”: Risk management to address corruption.</li> <li>• Whether there have been previous cases of corruption within the corporate and, if so, the effect of any remedial action.</li> <li>• Due diligence and risk assessments.</li> </ul>

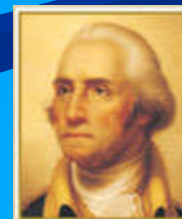


# Conclusion

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